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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,710	02/20/2004	Koji Sakuta	TAKIT-144-D2	4197

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SUITE 1400
ARLINGTON, VA 22201

EXAMINER

ROBERTS, LEZAH

ART UNIT	PAPER NUMBER
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1612

MAIL DATE	DELIVERY MODE
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01/31/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/781,710

Applicant(s)

SAKUTA, KOJI

Examiner

Lezah W. Roberts

Art Unit

1612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

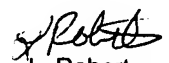
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed ^{response} amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 8-50 and 52-57.
Claim(s) withdrawn from consideration: 51 and 58.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


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Continuation of 11. does NOT place the application in condition for allowance because: Although the compositions of Sakuta were formulated to disperse water, the silicone compositions themselves do not contain water. The compositions are raw material for a final product. Applicant mentions the composition can disperse powders or pigments. This is motivation to use the silicone compositions for other products other than those that comprise water because the material can be used in products that require no water and requires the dispersion of other ingredients. As asserted before, the claims do not recite a non aqueous cosmetic "product", e.g. a "deodorant", they recite a cosmetic "material", which encompasses a raw material or intermediate composition and not just final products. The definition of material is "the substance or substances out of which a thing is or can be made" (American Heritage Dictionaries). The claims read on a material used to make a cosmetic composition or product. Applicant further recites In re Lalu and In re Jyurik. These appear to make reference to isolating an intermediate during a synthesis of a compound. The materials of the instant claims are already isolated and make up a sub composition. It would have been obvious to one of ordinary skill in the art to have used the silicone mixture without water because the secondary reference discloses not using water in a deodorant and the primary reference discloses the silicone compositions disperses powders. Furthermore it is obvious to omit an element and its function if the function of the element is not desired. See Ex parte Wu, 10 USPQ 2031 (Bd. Pat. App. & Inter. 1989). See also In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965) and In re Kuhle, 526 F.2d 553, 188 USPQ 7 (CCPA 1975). It would have been obvious not to add water because the water was not desired because of the undesired properties it adds to deodorant compositions.

In regards to Sakuta and Powell, as discussed above, there are properties disclosed by Sakuta that would lead one of ordinary skill in the art to use the silicone composition in a composition that does not comprise water, such as its ability to disperse powders. Sakuta also discloses the compositions are useful in cosmetic compositions. Also disclosed are the advantages of using the disclosed silicon compositions as opposed to silicone oils alone. It would have been reasonable for one of ordinary skill in the art to have formulated cosmetic compounds such as deodorants with the silicone compositions because Powell discloses using silicone components for the disclosed compositions. The reference also discloses that ascorbic acid is preferably used in personal care compositions, which would include those disclosed by Sakuta.

In regards to Sakuta in view of Kilgour, see response above. The reference also teaches that ascorbic acid is a water-sensitive dermatological active agent and should be used in compositions comprising no water. Therefore it would have been obvious not to have added water to the composition of the primary reference when using water sensitive components motivated by the desire to produce a stable product. See Ex parte Wu, In re Larson, and In re Kuhle, cited above.